IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

JUDGMENT

Champalal Vs. Nathu Singh @ Narain Singh & another

S.B.CIVIL MISC. APPEAL NO. 243/1995

Against the award dated 16.02.1995 made by the Motor Accidents Claims Tribunal, Phalodi in Claim Case No. 45/1994 (22/1993).

Date of Judgment : 16th May 2007

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.Rajesh Panwar for the appellant
Mr.Sanjeev Johari for the respondent No.2.

BY THE COURT:

This is claimant's appeal against the award dated 16.02.1995 made by the Motor Accidents Claims Tribunal, Phalodi in Claim Case No.45/1994 (22/1993) seeking enhancement over the amount of Rs.48,500/- together with interest at the rate of 12% per annum from the date of filing of claim application awarded by the Tribunal towards

compensation on account of loss suffered by him due to injuries sustained in a vehicular accident.

Background facts are that on 27.01.1993 at about 9:30 a.m., the claimant-appellant, then a student of 9th standard, while riding his bicycle going from his village Bhakhari towards his school at Samrau, was hit by a motorcycle bearing registration No.RSN 7775 belonging to and driven by the non-applicant No.1 and insured with the non-applicant No.2. Because of the accident, the claimant sustained several injuries including fracture of left hip bone at superior and outer lip of acetabular margin and that of left 2nd and 3rd metacarpal at distal ends. The claimant sought compensation against the driver-cum-owner and insurer of the aforesaid motorcycle asserting that the accident occurred for rash and negligent driving of the vehicle; and while pointing out his long drawn treatment, the claimant submitted that he was 17 years of age and was student of 9th standard but due to the injuries could not take examination; that his left hip and left hand were rendered useless and his future darkened. The claim for compensation was put to contest by the insurer while stating general denial of claim averments and alleging violation of policy conditions. After framing of necessary issues by the Tribunal, in oral evidence the claimant examined himself as PW-1 and his father Kheraj Ram as PW-2. In documentary

evidence the claimant produced certified copies of FIR as Ex.1; site inspection memo and site plan as Ex.2 and Ex.3; seizure memo and mechanical inspection report of motorcycle as Ex.4 and Ex.5; his injury report and X-ray report as Ex.6 and Ex.7; the application moved by the non-applicant No.1 for taking delivery of the motorcycle as Ex.28 and Superdaginama as Ex.29; and the order dated 23.02.1993 made in criminal case No.49/1993 wherein the non-applicant No.1 pleaded guilty to the charges and was punished with fine in sum of Rs.550/- by the learned Magistrate as Ex.31. The claimant also produced date of birth certificate from his school as Ex.8; the bills, slips, and vouchers related to his treatment as Exs.9 to 27; and a copy of the certificate dated 13.09.1993 issued by the Orthopaedic Surgeon of M.G.Hospital, Jodhpur certifying him to be a physically handicapped person with dislocation of left hip and knee stiffness as Ex.30. It may also be pointed out that the claimant had filed some other documents too like his discharge tickets and a certificate dated 12.12.1994 issued by the Medical Board of M.G.Hospital, Jodhpur that have not been marked in evidence though. The non-applicants did not lead any evidence.

After hearing the parties, the learned Judge of the Tribunal proceeded to hold that from the oral and

documentary evidence, issue No.1 stood proved in favour of the claimant that the accident occurred for rash and negligent driving of the said motorcycle bearing No.RSN 7775; and while rejecting the objections of the insurer in issues Nos.3 and 4 for want of relevant evidence, held the insurer liable for making payment of the amount of compensation.

The learned Judge took up for consideration the quantum of compensation in issues Nos.2 and 5 thus: In the first place the learned Judge referred to the averments in the claim application; then narrated the statement of the claimant, Champalal, and that of his father, Kherajram; then referred to the report dated 12.12.1994 issued by the Medical Board in relation to his permanent disability that was filed by the claimant on 17.12.1994 but was not as such exhibited in evidence; then quoted some points to be considered for the purpose of awarding compensation for bodily injuries as stated in a publication; then made an observation questioning the correctness of statements made by the claimant and his father regarding the period of hospitalisation of about 1½ months because discharge tickets record his hospitalisation for the periods from 27.01.1993 to 03.02.1993 and from 16.03.1993 to 18.03.1993; then observed that the claimant stated his being unable to continue with the studies but school certificate Ex.8 stated him to be a current student of

class 9th and the person issuing certificate was not examined in evidence and thereby the non-applicant could not cross-examine him; then purportedly reproduced some of the contents of the injury report and X-ray report; then purportedly quoted some words from the disability certificate Ex.30; then observed that the certificate dated 12.12.1994 as produced by the claimant later could be read in evidence and reproduced its contents whereby the Medical Board stated painful ankylosis left hip with 40º fixed flexion deformity and mild loss of coordination and 1 cm shortening and about malunited fracture forth metacarpal leading to impaired grip strength and certifying permanent physical impairment at 34% in relation to his whole body; then quoted some portions from out of Head-notes of various decisions cited on behalf of the parties regarding the quantum of compensation awarded in such injury cases. After this much of reproduction from the pleadings, oral and documentary evidence, and citations; and after some observations on incongruity in the stand of the claimant about the period of hospitalisation and about loss of studies, the learned Judge observed that the claimant has produced the bills even in the amount of Rs.8.50 and Rs.9.50 but his treatment has been in the Government Hospital at Jodhpur and thus looking to the total bills of Rs.888.60, he may be allowed Rs.1,000/- towards treatment expenditure,

Rs.3,000/- towards diets, Rs.3,000/- towards transportation, Rs.1,500/- towards damage of the bicycle and clothings, Rs.10,000/- towards pain and sufferings and Rs.30,000/- towards permanent disablement and loss of enjoyment and amenities of life; and in this manner assessed total loss for the claimant in the sum of Rs.48,500/-; and, while awarding this amount as compensation, allowed interest at the rate of 12% per annum from the date of filing of claim application on the remaining amount payable after adjustment of Rs.12,000/- awarded under No Fault Liability.

The award aforesaid has been questioned in this appeal as being too low and grossly inadequate particularly with the submissions that the claimant sustained several injuries in the accident at a young age of 17 years and is carrying the after-effects of injuries to the extent of 34% disablement including substantial restriction of left hip movement and so also of the left hand. The award in question has been supported on the other hand on behalf of the non-applicant insurer as being reasonable and sufficient looking to the period of treatment and nature of injuries.

Having heard learned counsel for the parties and having examined the record in its totality, this Court is clearly of opinion that the impugned award on its quantification of compensation suffers from fundamental errors, remains too

restrictive and inadequate, and deserves modification by upward revision.

Having examined the impugned award, this Court is constrained to observe that learned Judge of the Tribunal has though purportedly reproduced substantial portions of the pleadings and oral evidence, some part of the documentary evidence, several of the head-notes from the decisions cited by the parties, and even the principles stated in a publication for making award of compensation for bodily injuries, but has neither appreciated the evidence in its proper perspective nor has applied the principles applicable to the case. Mere reproduction of the pleadings, evidence and summary from the decisions cannot lead to a considered decision on the questions calling for determination unless the material available on record is put to proper analysis and is appreciated; and relevant legal principles are applied.

The learned Judge has proceeded to make a comment that claimant has not been truthful in his assertion about hospitalisation for 1½ months. The learned Judge has failed to consider that the accident in question occurred on 27.01.1993 and the injury report Ex.6 drawn on the same day show extensive bodily injuries sustained by the claimant including that at temporal region, index finger, forearm, nose and hip. The X-ray report Ex.7 made on 01.02.1993 clearly

shows chip fracture at superior and outer lip of acetabular margin and of 2nd and 3rd metacarpal (distal ends). The photostat of the discharge tickets are available on record, though not marked exhibits, and they show that the appellant remained hospitalised from 27.01.1993 to 03.02.1993 and was re-admitted on 16.03.1993 and discharged on 18.03.1993. However, even in the second discharge ticket the fact is distinctly that it were a case of dislocation of left hip and fracture of 4th metacarpal; and the patient was suffering from restricted movement of hip and knee. In the fact situation of the present case, particularly in view of the nature of injuries suffered by the claimant and his condition shown in the month of March 1993, it cannot be assumed that he was capable of leading his normal life immediately upon discharge on 03.02.1993 i.e., seven days after the accident. Even if the claimant has not remained an indoor patient as such for about 1½ months, it cannot be denied that he was required to remain immobile for the period.

The claimant has stated that he could not continue with his studies due to the injuries as he was not in a position to attend the school and has stated in his deposition on 16.04.1994 that he was still undergoing physiotherapy. The learned Judge has referred to the certificate Ex.8 issued on 19.04.1993 by the Head Master of Government Secondary

School, Samrau in relation to date of birth of the claimant and has commented that the said certificate states the claimant being a student of 9th standard and hence, the claimant is not truthful while stating discontinuance of studies. It is difficult to make out as to how, in the fact situation of this case, with reference to the said certificate the claimant becomes an untruthful person when he says that he could not continue with the studies? It cannot be assumed that immediately after the accident, the claimant would put curtains on his studies forever and he would be expelled from the school at once. The true facts are not incompatible when the school concerned referred him as student of class 9th in the certificate issued on 19.04.1993 and when the claimant stated in his deposition on 16.04.1994 that he could not continue with his studies.

Apart from the above mentioned shortcomings that show the learned Judge having not taken into comprehension all the facts and circumstances of the case in their proper perspective, it is noticed that the learned Judge proceeded to quote certain principles relating to awarding of compensation for bodily injuries; and noted that while awarding compensation broadly on two heads, pecuniary loss or special damages and non-pecuniary loss or general damages, in relation to pecuniary damages an essential component

considered is the loss of earning capacity which may include incapability to earn in further years and also the incapability in the labour market or loss of earning on account of termination of service or discontinuance of any trade, business or profession. However, while making the award impugned, such essential component of the loss of earning capacity has altogether been ignored and that has resulted in substantial failure of justice.

The claimant was a bit above 17 years of age on the date of accident i.e. 27.01.1993, his date of birth being 11.11.1975 as established from the certificate Ex.8. He was student of 9th standard and in fact met with the accident only while proceeding towards his school on his bicycle. The accident caused serious injuries on his left hip and left hand. The certificate issued by the Medical Board of the Government Hospital, Jodhpur on 12.12.1994 in relation to the claimant though has not as such been exhibited in evidence, the fact remains that the claimant had suffered permanent disablement due to dislocaton of hip and stiffness of knee as stated in the disablement certificate Ex.30. In that context, if the said report of the Medical Board dated 12.12.1994 is considered merely for the purpose of looking at the nature and particulars of disablement, it is noticed that the Medical Board has found that the claimant was carrying painful ankylosis left hip with

40º fixed flexion deformity and mild loss of co-ordination and 1 cm shortening; and so also impaired grip strength with restriction of terminal range of movement at 4th metacarpal joint. The Medical Board has put his disability at 34% and in the circumstances of the case, even if such percentage of disablement for the purpose of considering the loss of earning capacity and future prospects is taken only at about 20%, a reasonable amount of compensation towards such loss cannot be denied to the claimant-appellant; and the effect of the fact that he could not continue with the studies can also not be ignored altogether.

The Tribunal has proceeded to allow Rs.1,000/- towards treatment expenditure, Rs.3,000/- towards diets, Rs.3,000/- towards transportation and Rs.1,500/- towards property damage. The Tribunal has further allowed Rs.10,000/- towards pain and sufferings and Rs.30,000/- towards loss of amenities of life. The amount so awarded by the Tribunal on every score has only been rather restrictive. However, in the circumstances of the case, even if no enhancement on the aforesaid scores is considered, this Court is clearly of opinion that there is no reason not to allow a further reasonable amount of compensation to the claimant towards loss of earning capacity.

The claimant was about 17 years of age and even if his notional income is taken at Rs.15,000/- per annum for the purpose of assessment of his pecuniary loss; and with reference to his loss of earning capacity at 20%, annual loss is taken at Rs 3,000/- and is capitalized with multiplier of 16, this Court is clearly of opinion that an amount of Rs. 48,000/- deserves to be allowed to the claimant towards loss of income and for the set back suffered by him in his studies. The award of compensation as made by the Tribunal in the sum of Rs.48,500/-, therefore, turns out to be inadequate and deserves modification. The claimant is allowed another amount of Rs 48,000/- over and above the amount of Rs.48,500/- awarded by the Tribunal, thus making total award in the sum of Rs. 96,500/-.

The Tribunal has allowed interest @ 12% per annum; but in view of the enhancement being allowed herein and looking to the period of litigation, it appears appropriate to allow interest @ 7.5% per annum on the enhanced amount from the date of filing of claim application.

In the result, the appeal filed by the appellant claimant succeeds and is partly allowed; the award made by the Tribunal is modified and in place of amount of Rs.48,500/-, the claimant-appellant is awarded compensation in the sum of Rs.96,500/-. The claimant shall, thus, be entitled

for a further amount of Rs.48,000/- over and above the amount awarded by the Tribunal and shall be entitled for interest @ 7.5% per annum on this enhanced amount from the date of filing of claim application. The respondent insurer shall deposit the remaining amount now payable within 30 days with the Tribunal that shall issue necessary and appropriate orders for disbursement. In the circumstances of the case, the parties are left to bear their own costs.

(DINESH MAHESHWARI),J.

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